

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SAMUEL GRIFFIN,

Petitioner,

vs.

JAMES BENEDETTI, *et al.*,

Respondents.

3:07-cv-00525-HDM-VPC

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court for initial review of the amended petition (#32) pursuant to the Court's prior order (#31) and Rule 4 of the Rules Governing Section 2254 Cases.

In the amended petition, petitioner carries forward only Ground 2 from the original petition (#8), which now is designated as Ground 1. Some of the allegations in amended Ground 1, standing alone without context, are vague. For example, subpart 3 of amended Ground 1 refers to counsel's failure to correct unspecified errors in the presentence investigation report. In the original petition, however, petitioner had alleged in original Ground 1 what the alleged errors were, and he expressly incorporated original Ground 1 into original Ground 2 in the original petition.

In the prior order, the Court informed petitioner, *inter alia*, that any amended petition filed must be complete in itself without reference to previously filed papers and that any claims or allegations that were left out of the amended petition would no longer will be before the Court. In this particular case, however, the most efficient way to proceed at this point would

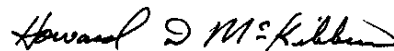
1 be to read the allegations of amended Ground 1 *in pari materia* with applicable exhausted
2 factual allegations from other claims in the original petition. It is clear from the record on file
3 that the state courts reviewed the claims in amended Ground 1 on the merits. See #22, Exhs.
4 61, 71 & 94. No material useful purpose would be served at this point by requiring the *pro se*
5 petitioner to again amend the petition to more fully state amended Ground 1 when it is clear
6 both what the underlying specific exhausted allegations are and that the state courts
7 addressed those allegations on the merits.

8 However, in reading amended Ground 1 *in pari materia* with related factual allegations
9 in the original petition, the Court is in no sense holding that the legal claims in original
10 Grounds 1, 3, and 4 remain before the Court. Petitioner did not carry forward any of these
11 legal claims – which were the subject of respondents’ earlier motion to dismiss – in the
12 amended petition. The only legal claims that now remain before this Court are those
13 presented in amended Ground 1 (original Ground 2).

14 IT THEREFORE IS ORDERED that, within thirty (30) days of entry of this order,
15 respondents shall file an answer to amended Ground 1 that responds to the merits of the
16 claims therein, subject to the foregoing discussion in this order. If respondents wish to
17 present any procedural defenses to amended Ground 1, they shall do so within the answer
18 along with a full response to the merits. In responding to the merits of each subpart in
19 amended Ground 1, respondents shall specifically cite to and address the applicable state
20 court written decisions (including the state district court decisions in this case) and state court
21 record materials regarding that particular subpart.

22 IT FURTHER IS ORDERED that petitioner shall have thirty (30) days from service of
23 the answer within which to mail a reply to the Clerk for filing.

24 DATED: April 12, 2010.

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28 HOWARD D. MCKIBBEN
United States District Judge